IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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S.B. CIVIL WRIT PETITION NO.4238/2005

Mohammed Khan

Versus

State of Rajasthan and Ors.

Date of Order : 19.7.2005

PRESENT

HON'BLE MR. JUSTICE R.P.VYAS

Mr. M.A. Siddiqui, for the petitioner.

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The present writ petition under Article 226 of the constitution of India has been filed by the petitioner with a prayer that the impugned order of transfer dtd. 11.7.2005 (Annex.-5) may be quashed and set aside qua the petitioner.

Briefly stated the facts of the case as stated by the petitioner are that the petitioner entered the services of the respondents w.e.f. 24.12.1982 as a Gram Sewak. During the course of his service, the petitioner was transferred at various places by different orders during his

service tenure. Vide order dated 2.3.2005 the petitioner was posted at Panchayat Samiti, Sankada from Dantal and vide order dated 4.4.2005, the headquarter of the petitioner was fixed at the office of Zila Parishad, Jaisalmer. Vide order dated 13.4.2005 earlier, the order dated 5.4.2005 was cancelled. Vide circular dated 21.7.2005, the respondent authority has directed all the Zila Parishad to inform as to how many Gram Sewaks are working under Panchayat Samiti / Zila Parishad head quarter.

Now vide order dated 11.7.2005 (Annexure-5) the petitioner has been transferred from Jaisalmer to Panchayat Samiti Aspur, District Dungarpur on administrative exigency. This order has been challenged in this writ petition.

Heard learned counsel for the petitioner at admission stage.

The first and formost contention of the learned counsel for the petitioner that the impugned order of transfer dated 11.7.2005 (Annex.-5) has been passed without administrative exigency, as the six posts of Gram

Sewak are lying vacant in Panchayat Samiti Sankada and after his transfer there will be seven posts vacant of Panchayat Samiti, Sankada. Further more the persons having longer stay than the petitioner in Panchayat Samiti, Sankada have not been transferred whereas the petitioner has been transferred without any rhyme or reason.

The learned counsel for the petitioner has also referred to the provisions of Rule 290 of the Rajashan Panchayati Raj Rules, 1996 and submits that while passing the impugned order dated 11.7.2005 provisions of Rule 290 have not been followed.

The learned counsel for the petitioner also stated that the impugned order has been passed on the political consideration, in as much as, copy of the said order has been endorsed to the private secretary to the Ministry concerned. The petitioner is a low paid employee and he has been made scapegoat. Therefore, the impugned order of transfer is absolutely illegal and the same does not require any interference by this Court.

I have considered the submissions made by the

learned counsel for the petitioner. The transfer is an incident of service. It is not a punishment. It is the prerogative of the employer to transfer its employee as per its requirement in administrative exigency. The employer is not required to disclose the administrative exigency in the order of transfer. Further more, an employee cannot claim his posting at a particular place.

That apart the Hon'ble Supreme Court as well as this Court in catena of judgements have held that transferred order should not be interfered with while exercising jurisdiction under Article 226 of the Constitution of India, unless the same is actuated with malice or mala-fide. The petitioner has not levelled any specific allegation of mala-fide against any officer nor he has impleaded any one as party respondent.

Merely endorsing the copy of transfer order to the private secretary of the concerned minister does not reflect mala-fides on the part of any one. The impugned order of transfer is a general order whereby in as much as 433 employees working on the post of Gram Sewak have been transferred. It appears that since large number of Gram Sewaks have been transferred by the impugned order,

therefore, a copy of this order has been endorsed to the private secretary to the Hon'ble Minister. It does not smack malafide or malice nor it can be said that impugned order of transfer has been passed on political consideration.

For the reasons mentioned above, the impugned order of transfer dated 11.7.2005 does not require any interference by this Court.

Accordingly, I do not find any merit in this writ petition and the same is hereby dismissed.

No order as to costs.

(R.P. VYAS)J.

Rm/